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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,410	01/22/2001	Todd A. Bland		7333

7590 04/14/2003
Todd A. Bland
13708 Frederick Avenue
Omaha, NE 68138

EXAMINER

HUSAR, STEPHEN F

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/766,410

Applicant(s)

BLAND, TODD A.

Examiner

Stephen F. Husar

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of "visual warning means" and the "common adapter as set forth in claims 3 and 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note that the drawings at present show only a sole or single warning means.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 4 is objected to because of the following informalities: The term, "incandescent" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 10 and 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: How or what on the lofty and horizontally vibratory upright column cooperates with the rear-end of the walking shoe to relegatively attachably confine the visual warning means to the rear-end

of the shoe in independent claim 10. It is unclear from the claim or applicant's disclosure how the upright column is attached to the rear of the shoe. There at least needs to be a recitation that one end of the upright column is attached to the rear end of the shoe and the opposite end of the column carries the visually prominent bright ornamental feature. It appears that the "common adapter" set forth in claims 3 and 6 but not shown or discussed in applicant's specification provides the necessary function. Clarification is required. Claims 2-9 depend on a rejected parent claim 10 and as such are similarly rejected.

Claim Rejections - 35 USC § 103

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over HANDZLIK (5246749). The invention as well as can be understood due to the 35 USC 112 rejection as set forth above is drawn to an ornamental device which has an ornament suspended from an elongated member attached to the rear end of a shoe. HANDZLIK shows in Fig.1 an ornament "9" suspended from an elongated member "3" attached to a shoe "2". HANDZLIK further discloses that the ornamental device may be attached to any number of shoe components, see column 1, lines 37-41. Further, Fig.2 of HANDZLIK shows the elongated member "3" attached to the collar "22" of the shoe "2" which includes the rear portion of the shoe. This location would correspond with the recitation in claim 10, line 5 of the rear-end of the walking shoe. Finally, HANDZLIK's disclosure that the ornamental device can be attached to any number of shoe components in column 1, lines 37-41 would show that the specific shoe attachment

location is an obvious matter of choice absent a showing by applicant that his location produces some new and unexpected result.

Allowable Subject Matter

6. Claims 2-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 10 and 2-9 have been considered but are moot in view of the new ground(s) of rejection. With regard to applicant's argument that HANDZLIK is stiffly non-vibratory, note that HANDZLIK discloses in column 2, lines 40-43 that antenna member "3" has some inherent resiliency such that the ornamental device bounces. Therefore until applicant structurally distinguishes over the antenna member of HANDZLIK by reciting that his upright column contains a helically wound spring member there is no distinction as presently recited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Husar whose telephone number is 703-308-1932. The examiner can normally be reached on Monday-Friday from 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Stephen F. Husar
Stephen F. Husar
Primary Examiner
Art Unit 2875

SFH
April 7, 2003